

REMARKS

Initially, Applicant expresses appreciation to the Examiner for the courtesies extended during an in person interview with the Applicant's representative on April 18, 2007. The amendments and remarks made by this paper are consistent with the proposals and discussions presented during the in person interview and which clarified distinctions between the pending claims and the art of record.

The Office Action mailed March 7, 2007 considered and rejected claims 1-40. Claims 21-40 were rejected under 35 U.S.C. §101 for reciting claims that were purportedly directed to non-statutory subject matter. Claims 1, 13, 14, 16, and 17 were rejected under 35 U.S.C. §102(e) as being anticipated by Johnson (US 2004/0073890) hereinafter Johnson. Claims 2-12, 18-38 and 40 were rejected under 35 U.S.C. §103(a) as being unpatentable over Johnson in view of Ruffolo (US 2003/0196190) hereinafter Ruffolo. Finally, claims 15 and 39 were rejected under 35 U.S.C. §103(a) as being unpatentable over Johnson in view of the admitted prior art of paragraph [0007] of Applicant's background.

By this paper, claims 1, 17, 21 and 25 have been amended and new claim 41 has been added, such that claims 1-41 now remain pending for reconsideration. Support for the claim amendments and new claim includes the disclosure reviewed during the interview, including paragraphs [0010], [0028] and [0030]. Claims 1, 17, 21 and 25 are the only independent claims at issue, with claim 1 and 17 reciting methods and claims 21 and 25 reciting corresponding computer program products for implementing the methods of claims 1 and 17, respectively.

As discussed during the interview, the present invention is generally directed to embodiments in which software is tested/verified with one or more tunable test cases that are capable of being set to any of a plurality of verification levels. The method recited in claim 1 and incorporated into claim 21, for example, includes the acts of reading in test cases having testing instructions organized within a verification hierarchy and that define different amounts of checking to perform for determining if the software functions as intended when executed. One or more desired verification levels are then selected or read in to identify a test group comprising a plurality of test cases including at least one of the one or more test cases having software testing instructions that corresponds to the one or more desired verification levels. The entire group of test cases, which correspond to the test group, are then run. Thereafter, upon detecting

an adverse or unexpected result from running the test, the method includes isolating the plurality of test cases within the test group and running each of the isolated test cases individually to determine which of the isolated test cases caused the adverse or unexpected result.

Claims 17 and 25 are directed to related embodiments for testing software wherein at least two different verification levels are provided for testing the software and wherein selection of a first verification level causes testing without producing any output and wherein selection of a second verification level causes testing with output. The method recited in claim 17 and incorporated into claim 25 is useful, for example, to enable a pure stress test without wasting resources that would otherwise be consumed in generating and recording output, particularly if the output was to be ignored.

With specific regard to the scope of claims 17 and 25, it will be noted that the claims have been amended to clarify that under some circumstances no recorded output is produced at all during the testing (such as, for example, during stress testing). This is an appreciable departure from prior art stress tests that produce and/or record output that is later ignored. (See paragraphs [0006], [0007], [0009] and [0025]). This subject matter also relates to the embodiments previously and currently recited in dependent claims 15 and 39. The claimed embodiment of performing a test without producing any recorded output was found by the last Office Action to be obvious in view of APA teachings of stress testing. (See Office Action Rejection #13 on page 6). Applicants respectfully disagree with this assertion, as discussed and clarified during the interview. In particular, Applicant's Application actually teaches the opposite thing by stating that the "output produced or recorded" during prior art stress testing is ignored. (see [0009]). This disclosure and the other disclosure referenced above (paragraphs [0006]-[0009]) clearly indicates that prior art stress tests did produce recorded output. It was just ignored. Accordingly, it is clear that claims 17 and 25 are distinguished from the cited art of record, including the disclosed prior art embodiments referenced in the Application.

Now with regard to the other independent claims (claims 1 and 21), which were rejected in view of Johnson under 35 U.S.C. §102, it will be noted that Johnson clearly fails to anticipate or render the amended claims obvious for at least the reasons discussed during the interview. In particular, while Johnson is generally directed to testing management, Johnson fails to teach or suggest any embodiment in which a group of tests is run, according to the selection of one or

more verification levels, and then upon detecting an adverse reaction to the group test, isolates the tests in the group and runs them individually to determine which specific test caused the adverse reaction or failure, as claimed, for example, in combination with the other recited claim elements. Instead, Johnson is directed to embodiments for creating a system in which a plurality of different tests are run against a plurality of different system configurations to create a matrix of test results that correspond to the various testing conditions.

The only other referenced art Ruffolo, which was used to reject some of the dependent claim, also fails to compensate for the inadequacies of Johnson. In particular, while Ruffolo does disclose methods for creating testing plans and in which a plurality of different items or components to test can be identified, Ruffolo fails to teach or suggest the running of a group test and then later isolating specific test cases from the group test when an adverse reaction or failure occurs.

Finally, with regard to the §101 rejections, it will be noted that the computer readable media claims have been amended to clarify that the computer readable media comprise computer readable storage media, thereby rendering the rejections moot. In particular, it is clear now that the claims are directed to physical and tangible storage media. Notwithstanding these amendments, which have been made to expedite the allowance of the claims, it will be noted that Applicant respectfully disagrees with the foregoing §101 rejections inasmuch as computer readable media comprising carrier signals should also be considered to be physical and tangible inasmuch as they have physical properties that allow them to be transmitted and read.

In view of the amendments made by this paper, the foregoing remarks and the other remarks presented during the interview, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time.¹

¹ It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

Application No. 10/723,755
Amendment "A" dated April 30, 2007
Reply to Non-Final Office Action mailed March 7, 2007

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at 801-533-9800.

Dated this 30th day of April, 2007.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rick D. Nydegger", with a stylized, cursive script.

RICK D. NYDEGGER
Registration No. 28,651
JENS C. JENKINS
Registration No. 44,803
Attorneys for Applicant
Customer No. 47973

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